

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Michael E. Kerns,

Plaintiff, : Case No. 2:04-cv-696

v. : Judge Graham

The Airolite Company, *et al.*, : Magistrate Judge Abel

Defendants. :

ORDER

On August 30, 2005, the Magistrate Judge issued a Report and Recommendation ruling on Defendant United Steelworkers of America, AFL-CIO's May 24, 2005, motion to dismiss pursuant to 41(b) or in the alternative motion for extension of discovery cutoff for Defendant United Steelworkers of America only (Doc. 15). It recommended that if Plaintiff Michael E. Kerns had served discovery responses by June 30, 2005, Kerns should be sanctioned by paying Defendant's attorney's fees and expenses in filing and briefing its motion. However, if Kerns did not serve responses to Defendant's discovery requests by June 30, 2005, it was recommended that Defendant United Steelworkers of America's motion to dismiss be granted and that this action be dismissed. The parties had ten days to file objections to the Report and Recommendation; no objections were filed.

On August 30, 2005, United Steelworkers of America filed a notice stating that Kerns filed his responses to United Steelworkers of America's discovery request on July 11, 2005. Gallagher Aff., ¶ 1. Since the filing was after the June 30th deadline required by the Magistrate Judge's Report and Recommendation, United Steelworkers of America requests

that this action be dismissed.

The Report and Recommendation reasoned that Kerns had failed to adequately prosecute this lawsuit. He brought this suit against Defendant Airolite Company, his former employer, for breach of a collective bargaining agreement, and Defendant United Steelworkers of America for breach of the duty of fair representation for improperly terminating Kerns' grievance for the breach of the collective bargaining agreement.

This action was filed on July 30, 2004. A preliminary pretrial conference was held on December 17, 2004. The discovery deadline was set for May 27, 2005, and the dispositive motions deadline was set for July 1, 2005. Kerns failed to meet the May 27, 2005, deadline, and he did not request an extension of time. However, he told opposing counsel that he would make his initial disclosures by June 3, 2005. Kerns failed to meet this deadline and promised that he would make the disclosures by June 30, 2005. Kerns again failed to meet the deadline. While Defendant filed a notice stating that Kerns filed discovery responses on United Steelworkers of America on July 11, 2005, this was after the deadline imposed by the Court. Furthermore, Kerns has not filed any objections to the Magistrate Judge's August 22, 2005, Report and Recommendation. Accordingly, the August 22, 2005, Report and Recommendation (Doc. 19) is **ADOPTED**. This action is **DISMISSED**.

It is so ORDERED.

s/James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: November 1, 2005